

Federal Communications Commission
Washington, D.C.

February 2, 2000

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DOCKET FILE COPY ORIGINAL

Re: Acceptance of Comments As Timely Filed in (Docket No. 96-45)

The Office of the Secretary has received your request for acceptance of your pleading in the above-referenced proceeding as timely filed due to operational problems with the Electronic Comment Filing System (ECFS). Pursuant to 47 C.F.R. Section 0.231(I), the Secretary has reviewed your request and verified your assertions. After considering arguments, the Secretary has determined that this pleading will be accepted as timely filed. If we can be of further assistance, please contact our office.

FEDERAL COMMUNICATIONS COMMISSION

William F. Cator
for Magalie Roman Salas
Secretary

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Federal-State Joint Board on) CC Docket No. 96-45
Universal Service:)
Promoting Deployment and Subscribership in)
Unserved)
And Underserved Areas, Including)
Tribal and Insular Areas)

MOTION TO ACCEPT THE FILING AS TIMELY FILED

On Wednesday, January 19, 2000, Bell Atlantic was unsuccessful in its attempts to file comments in this proceeding through the Commission's Electronic Comment Filing System ("ECFS"). Bell Atlantic first became concerned there was a problem with the ECFS system at 6:00 PM after several unsuccessful attempts to file electronically. Bell Atlantic representatives spoke with Bill Cline of the Commission's Consumer Information Bureau via telephone. Mr. Cline indicated that he was aware of problems with ECFS and that he anticipated the filing function would be available later in the evening. In spite of repeated attempts, however, Bell Atlantic was not able to upload these comments through the ECFS system before the midnight deadline.

Therefore, pursuant to 47 CFR § 0.231(i), Bell Atlantic respectfully requests that the attached comments be accepted as timely filed

Respectfully Submitted

Joseph DiBella / JLD

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Of Counsel:
Michael E. Glover

January 20, 2000

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.**

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Tribal and Insular Areas)	

REPLY COMMENTS OF BELL ATLANTIC

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January 19, 2000

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of

Federal-State Joint Board on
Universal Service:
Promoting Deployment and
Subscribership in Unserved
and Underserved Areas, Including
Tribal and Insular Areas

CC Docket No. 96-45

REPLY COMMENTS OF BELL ATLANTIC¹

I. Introduction and Summary.

The comments in this proceeding demonstrate that the primary reason that some tribal and insular areas are “underserved” is that they have high unemployment and low income. As a result, although service typically is available in these areas, some customers still cannot afford service. Rather than pursuing expensive proposals to subsidize construction of additional networks, which would do nothing to make service more affordable, the Commission should deal with the problem directly by enhancing support programs for low income customers in tribal and insular areas, such as the Lifeline and Link-up America programs. The Commission should

¹ The Bell Atlantic telephone companies (“Bell Atlantic”) are Bell Atlantic-Delaware, Inc.; Bell Atlantic-Maryland, Inc.; Bell Atlantic-New Jersey, Inc.; Bell Atlantic-Pennsylvania, Inc.; Bell Atlantic-Virginia, Inc.; Bell Atlantic-Washington, DC, Inc.; Bell Atlantic-West Virginia, Inc.; New York Telephone Company and New England Telephone and Telegraph Company.

narrowly define the term “unserved area” to be consistent with the Act – a “community or portion thereof” that no carrier is willing to serve. Where the unserved area is in a tribal area, the Commission should work with the tribal authorities, as well as with the state commission and local telecommunications providers, to identify the carrier that would be required to extend service to that area.

II. The Commission Should Provide Enhanced Lifeline and Link-up America Support To Tribal and Insular Areas.

Although telephone service currently is available to most tribal and insular communities, some customers in these areas simply cannot afford service, even when rates are similar to the national average, due to low income levels and high unemployment rates. *See, e.g.*, Golden West et. al, 8; TDS, 4-7; RUS, 8; Virgin Islands, 5-7; Salt River, 16; SDITC, 3; NRTA & OPASTCO, 5-7; Smith Bagley, 3. Encouraging additional carriers to provide service to these areas would not deal with the fundamental problem of customers who cannot afford telephone service. The Commission should deal with this problem directly by (1) enhancing existing low-income support mechanisms in tribal and insular areas, such as the Lifeline and Link-up America programs; and (2) using education and outreach to ensure that customers are aware of these programs and can take advantage of them.

Clearly, the Commission should take steps to ensure that customers in tribal and insular areas can obtain at least the same level of Lifeline support as customers in other areas. *See, e.g.*, GTE, 19; Salt River, 16-17. Some customers are not eligible for full Lifeline assistance because they are served by tribal carriers who are not subject to the jurisdiction of the state regulatory

commission and cannot obtain matching support from the state. *See, e.g.*, Salt River, 16. The Commission should not require tribal carriers who are not subject to the jurisdiction of a state commission to seek either state commission action or a waiver to obtain the additional \$1.75 per month support under the Lifeline program. Nor should it require state matching funds for such carriers in order to receive the additional \$1.75 per month. This would allow Lifeline customers to receive the same total amount of Lifeline support (\$7.00, including \$3.50 for the subscriber line charge) that is available to Lifeline customers who are not served by tribal carriers. In addition, the Commission should amend its rules for customers to qualify for Lifeline support to include means-tested assistance programs administered by the Bureau of Indian Affairs and Indian Health Services. *See Further Notice*, ¶ 72.

Because the cost of service in tribal and insular areas may be higher than the national average due factors such as geographic isolation and low population density, the Commission may need to enhance the Lifeline and Link-up America programs to provide additional support to these areas. *See, e.g.*, Montana PSC, 2; TDS, 8. Some commenters have suggested increasing the level of Link-up America payments to \$100 from the current level of \$30. *See, e.g.*, United Utilities, 6-7. While this suggestion has merit, it needs more study to resolve issues such as (1) how much of an increase is necessary to have a significant impact on subscribership; (2) whether the increased amount should be available only in limited areas, such as tribal areas and insular areas, or in other “underserved areas;” and (3) the impact of the increase on the funding requirements for universal service.

Many potential customers may be unaware of the existing federal assistance programs due their geographic isolation and lack of adequate communications. *See Remarks of*

Commissioner Tristani (Jan. 10, 2000). The Commission should work with state commissions and tribal authorities to advertise the availability of these programs and to assist customers in signing up for them.

The Commission should not adopt proposals (*e.g.*, US West, 8-9) to provide federal funding for line extensions to customers in isolated areas. These extensions often cost thousands of dollars, and funding them could greatly increase the size of the universal service fund. *See, e.g.*, Minnesota PUC, 7. In addition, there is no connection between the cost of these extensions and the ability of the customer to pay for them. The better approach is to use means-tested assistance programs, rather than cost-based assistance mechanisms, to enhance the ability of customers in underserved areas to afford service.

Commenters have suggested that the Commission should reduce the cost of toll calls for customers in isolated communities, either by increasing the size of toll-free local calling areas, or by providing up to \$25 of support for intrastate toll calls in certain areas. *See, e.g.*, GCI, 5-6; State of Alaska, 21. Neither of these proposals should be adopted at this time. The Commission does not have the authority to prescribe the size of the toll-free calling area for intrastate calls, which is exclusively within the jurisdiction of the state commissions. *See* 47 U.S.C. § 152(b). The Courts have made it clear that the Commission's authority to promote universal service under Section 254 of the Act does not give it authority to regulate state rates. *See Texas Office of Public Utility Counsel, et. al v. FCC*, 183 F.3d 393, 446-48 (5th Cir. 1999). Moreover, simply increasing the size of the local calling area would require revisions of intrastate telephone rates, which would shift the cost of toll calls to other customers in the state. Providing \$25 from the federal fund to provide free intrastate toll service to certain customers could be very expensive,

and it might do little to improve subscribership levels, since it is not clear that customers are declining to purchase basic telephone service solely because of the cost of toll calls.

III. The Commission Should Not Designate Tribal Areas as Separate Study Areas.

The Commission should not adopt proposals (*e.g.*, Salt River, 15) that it transform tribal areas into entirely separate study areas in order to generate additional high cost funding for these areas. This would not change the amount of support for the non-rural carriers serving tribal areas, since the Commission's funding mechanism for non-rural carriers aggregates all study areas within a given state for purposes of identifying high cost areas. For rural carriers, this proposal would simply shift support from other rural areas to tribal areas, due to the interim cap on the total amount of high cost support for rural carriers. This would not be an improvement from the current system, since it would take funding from states with above-average costs and give it to states with lower costs that are capable of providing support to tribal areas through internal mechanisms.

Some commenters suggest that the Commission could treat tribal areas as separate study areas without shifting support from other rural areas by removing the interim cap on the rural funding mechanism. *See, e.g.*, NRTA & OPASTCO, 9-10. However, this could greatly increase the size of the universal service fund, it would not be limited to tribal and insular areas, and it would provide federal support for states that do not need it.²

² Similarly, the proposal to eliminate the rule that limits the high cost support for an exchange that is sold to a rural carrier by a non-rural carrier to the level previously received by the non-rural carrier (*see* NRTA & OPASTCO, 9) would do little to increase subscribership in tribal and insular areas.

IV. The Commission Should Define An “Unserved” Area Consistently With The Language And Intent Of The Act.

As several commenters correctly point out, the Commission's proposed definition of “unserved” areas is inconsistent with the language of the Act. *See, e.g.*, US West, 7-8; GTE, 7; AT&T, 2; SDITC, 9-10.

Section 214(e)(3) allows the Commission or the states to designate the carrier or carriers to serve “an unserved community or portion thereof” that no carrier otherwise is willing to serve. The Commission's proposal to define unserved areas as “any area in which facilities would need to be deployed in order for its residents to receive service” fails to track the statute for two reasons. *See Further Notice*, ¶ 86. First, it would include an area which clearly is not a “community or portion thereof.” It could include a single customer in a remote area that would need a line extension to receive service from the existing service provider. Such a customer cannot be considered a “portion of a community.” Second, if the area is within a carrier's existing service area, it cannot be considered “unserved” if the carrier is willing to deploy facilities to the area, albeit at an additional charge such as a special construction charge or a line extension charge. Clearly, such areas do not require the Commission to designate a new carrier to provide service under Section 214(e)(3).

The Commission should adopt a definition of “unserved” area that tracks the statutory language. An “unserved area” should be defined as a “community or portion thereof” that is outside the service area of the incumbent local exchange carrier, or that neither the incumbent nor any other common carrier is willing to serve.

Several commenters also correctly argue that the Commission should not define a new category called an “underserved” area. *See, e.g.*, AT&T, 5; TDS, 21-22. This is not a term that is contained in the Act, and it is not a category that the Commission is authorized to create. In any event, the Act specifically directs the Commission to ensure that “rural, insular, and high cost areas” have access to telecommunications services that are comparable to those available in urban areas. *See* 47 U.S.C. § 254(b)(3). As a result, there is no need to create a new category of unknown size, scope, or cost in order to provide support for these areas.

V. The Commission Should Adopt Rules That Are Competitively And Technologically Neutral In Designating The Level Of Support For Unserved Areas.

Several wireless carriers argue that the Commission should adopt rules that would promote the provision of wireless telecommunications services to tribal and insular areas and other areas with low subscribership due to their remote locations. While they claim that the rules they propose would be technologically neutral, some of their proposals would apply only to wireless carriers as a means of encouraging such services. *See, e.g.*, AirTouch, 7-10. By definition, this would not be technologically neutral. While wireless service may be more cost-effective in some circumstances, it can be far more expensive than wireline service in others. *See, e.g.*, Constellation, 2; AirTouch, 5-6. Indeed, the wireless carriers concede that the per-minute cost to some rural and insular areas with satellite and cellular service may be much higher than landline rates, which would require higher levels of universal service support.

The Commission should adopt rules that will allow all eligible telecommunications carriers to receive the same amount of support for providing service in a given area, regardless of

the technology used. *See* CenturyTel, 14. The rules should be clarified or modified to eliminate any obstacles to participation in the high cost fund by wireless carriers. *See, e.g.*, Bell Atlantic Mobile, 20-25. This would promote wireless service in areas where it would be the most efficient means of serving a customer.

VI. The Commission Should Work With The State Commissions And The Tribal Authorities In Designating Carriers To Serve Unserved Areas In Tribal Areas.

Several Indian tribes expressed their concern about being part of the process of identifying carriers to serve customers in tribal lands. *See, e.g.*, Nez Perce Tribe, 1-2; Tohono O’odham Nation, 2; Crow Tribal Council, 2-3; Salt River, 2-14. Section 214(e)(3) states that “the Commission, with respect to interstate services, or a State commission, with respect to intrastate services, shall designate which common carrier or carriers are best able to provide such service to the requesting unserved community or portion thereof.” The Indian tribes propose that the Commission establish a formal policy of involving tribal authorities in these decisions.

While this proposal has merit, the Commission also should consult with members of the community and the incumbent telecommunications carriers in the area before ordering a common carrier to serve an “unserved” community or portion of a community in a tribal land. The comments demonstrate that there are a variety of factors that affect the ability of customers in tribal lands to obtain telephone service. These include jurisdictional issues such as whether the community is served by a tribal carrier not subject to the jurisdiction of the state regulatory commission, whether the area is within the service area of a non-tribal carrier, and whether the state asserts jurisdiction over the provision of telecommunications services within the area. *See,*

e.g., South Dakota, 4; RUS, 9-10. Tribal authorities may control access and rights of way, which will affect both the ability and the incentive of carriers to extend service. And there are myriad financial, demographic, and geographic factors that must be taken into consideration. All stakeholders should be given an opportunity to be heard in resolving these issues.

The comments of the Tuscarora Indian Nation illustrate the unique issues that may arise in providing service to customers in tribal lands. They argue that Bell Atlantic has refused to provide service unless it is given access to all customers on the reservation, including “the more lucrative market that unauthorized or illegal Reservation business might offer.” Tuscarora, 6. However, the issue is more complicated than that. The Tuscarora Nation’s Council of Chiefs has, for some time, required Bell Atlantic to obtain permission from the Council prior to entering the Nation’s land to install and repair services. For many years, this process worked successfully. However, in recent years, the process has not worked, because the Council has denied Bell Atlantic permission to enter the reservation to provide service to businesses that the Council has determined are unauthorized under Tuscarora law. This has placed Bell Atlantic in the middle of a dispute between the Council and businesses that have been denied service.

Based on experience, Bell Atlantic determined that this situation posed a safety issue for its employees who are called upon to enter the Reservation to serve some customers but not others. Accordingly, Bell Atlantic advised the Council that it would no longer install or maintain

service on the reservation unless it could respond to any business or residential customers that requested service.³

This situation illustrates the fact that conditions in each area must be examined to identify and resolve the impediments that are preventing customers from receiving service. To develop a complete record, both tribal authorities and local carriers should be involved in the deliberations of the Commission and the states.

³ Contrary to Tuscarora's statements, Bell Atlantic did not claim that New York Public Service Law, which requires that service be provided on a non-discriminatory basis, applies to telephone service on the reservation.

VII. Conclusion

The Commission should adopt enhanced and targeted assistance programs that would have a direct impact on subscribership in tribal, insular, and underserved areas.

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Respectfully submitted,

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Dated: January 19, 2000